Viewpointe Archive Services, LLC v. Datatreasury Corporation Doc. 40

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

VIEWPOINTE ARCHIVE SERVICES, LLC,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 2:05-CV-459-LED
DATATREASURY CORPORATION,	§	
Defendant.	§	

UNOPPOSED NOTICE OF WITHDRAWAL OF
VIEWPOINTE'S NOTICE OF DISMISSAL

On October 7, 2005, Viewpointe filed a Notice of Dismissal requesting a dismissal without prejudice of its above captioned declaratory judgment action, which was recently transferred over Viewpointe's objection from the Northern District to this Court. Viewpointe disputes that venue is proper in this district. Moreover, the claims at issue in the instant declaratory judgment action are duplicative of those at issue in a lawsuit filed by DataTreasury against Viewpointe that is already pending in this district. Because these circumstances leave Viewpointe in the unique position of being a plaintiff in an action in a district where it is currently arguing that venue is not proper, and because of the confusion and congestion created by having two duplicative actions pending before the same Court, Viewpointe filed its Notice of Dismissal. DataTreasury's counsel has since indicated that DataTreasury opposes Viewpointe's request to dismiss, without prejudice, the instant action. As such, Viewpointe respectfully hereby withdraws its Notice of Dismissal.

Dockets.Justia.com

Dated: October 13, 2005

Respectfully Submitted,

/s/ Melvin R. Wilcox, III
Melvin R. Wilcox, III
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Attorneys for Plaintiff
VIEWPOINTE ARCHIVE SERVICES, LLC

CERTIFICATE OF CONFERENCE

Marti A. Johnson, counsel for Viewpointe Archive Services, LLC, conferred with Karl Rupp, counsel for DataTreasury Corporation, on October 13, 2005 regarding the instant Notice of Withdrawal. Mr. Rupp advised that DataTreasury Corporation does not oppose the withdrawal of Viewpointe's notice of dismissal.

/s/ Melvin R. Wilcox, III

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service on this the 13th day of October 2005. Local Rule CV-5(a)(3)(A).

/s/ Melvin R. Wilcox, III
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